

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

| | | |
|-----------------------------|---|-----------------------|
| THOMAS L. CLELLAND, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | |
| |) | No. 06-5042-CV-SW-FJG |
| CUNNINGHAM SANDBLASTING AND |) | |
| PAINTING, INC., et al., |) | |
| |) | |
| Defendants. |) | |

ORDER

Pending before the Court are (1) Plaintiff's Motion for Order Directing the Defendants to Answer the Plaintiff's Complaint (Doc. No. 46); and (2) Plaintiff's Motion for Order to Execute Depositions by Written Questions (Doc. No. 47).

With respect to plaintiff's motion for an order directing defendants to answer, defendants Cunningham Sandblasting & Painting, Inc., Unicon Inc., and Ned Walters filed an answer on January 16, 2007 (Doc. No. 49), and defendant Caldwell Tank, Inc. filed an answer on January 17, 2007 (Doc. No. 51). Accordingly, as all named defendants have answered plaintiff's complaint, plaintiff's motion for an order directing defendants to answer (Doc. No. 46) is **DENIED AS MOOT**.

With respect to plaintiff's motion for an order to execute depositions by written questions, the Court notes that Rule 31(a)(1) of the Federal Rules of Civil Procedure provides that "[a] party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2)." Plaintiff does not demonstrate any reason why he needs leave of court in order to serve depositions upon written questions to the persons listed in his motion. In particular, Rule 31(a)(2) provides that leave of court is required only when the person to be examined is confined in prison, or if the parties have not stipulated in writing, when the proposed

deposition would result in more than ten depositions being taken under this rule, when the person to be examined has already been deposed, or if a party seeks to take a deposition before the parties have met and conferred pursuant to Rule 26(d). None of these exceptions to the general rule appear to apply to plaintiff's circumstances. Therefore, plaintiff is able to serve depositions upon written questions without intervention of the Court. Plaintiff's motion for an order to execute depositions by written questions (Doc. No. 47) is **DENIED AS MOOT.**

IT IS FURTHER ORDERED that the Clerk of the Court send a copy of this order via regular and certified mail to plaintiff at the following address:

Thomas L. Clelland
403 E. 20th St.
Pittsburg, Kansas 66762

IT IS SO ORDERED.

Date: 1/22/07
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge